

MINUTES
BOARD OF SUPERVISORS
COUNTY OF YORK

Adjourned Meeting
May 30, 2000

6:30 p.m.

Meeting Convened. An Adjourned Meeting of the York County Board of Supervisors was called to order at 6:35 p.m., Tuesday, May 30, 2000, in the East Room, York Hall, by Vice Chairman James S. Burgett.

Attendance. The following members of the Board of Supervisors were present: Sheila S. Noll, Donald E. Wiggins, and James S. Burgett.

Walter C. Zaremba and Melanie L. Rapp were absent.

Also in attendance were Daniel M. Stuck, County Administrator; and James E. Barnett, County Attorney.

WORK SESSION

TRUSTEES' AGREEMENT

Mr. Stuck explained the efforts of staff to have the Trustees present at this meeting and that all of them were personally called this morning. He stated at this point staff was not sure which members would be present to represent the Trustees. He noted they were invited to be present at 7:30 p.m.

Miss Rapp arrived at 6:37 p.m.

Vice Chairman Burgett and Mrs. Noll expressed their feelings that the agreement as proposed by the Trustees was unacceptable. Mr. Burgett indicated it was a very restrictive lease agreement.

Mrs. Noll noted there was no mention of cooperation in it between the two bodies.

Discussion took place concerning the proposed agreement provided by the Trustees and how to proceed with the meeting at 7:30 p.m.

Vice Chairman Burgett asked for clarification that the Trustees were the administrators of the property under its trust for the people.

Mr. Barnett stated the Trustees actually own the beach property and hold it in trust for the people of York.

Discussion followed on the authority for and control of the property held in trust by the Trustees. The Board members also discussed the lack of information to be found concerning the status of funds from the past sale of Trustees' properties.

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Miss Rapp also voiced her displeasure with the Trustees' proposal, stating she wanted the Board to start negotiations with the County's proposal instead

Vice Chairman Burgett expressed his agreement with Miss Rapp that the proposed document was not a place to start, and stated he felt that was the consensus of the Board.

Mrs. Noll added her agreement, stating the property belonged to the citizens of York County and not the five Trustees. She stated the County has bent over backwards over the past years to work with the Trustees, and she felt the proposed agreement was a slap in the Board's face.

Miss Rapp stated she would like to somehow make it a win/win situation.

Vice Chairman Burgett indicated his goal was to get the original agreement as proposed by County staff adopted with some minor amendments.

A brief discussion followed on the unsuccessful prior management of the beach area by the Trustees.

ARCHITECTURAL GUIDELINES FOR YORKTOWN

Mr. Carter made a brief presentation concerning the development of architectural guidelines for development in Yorktown. He explained how the issue first came up 21 years ago and was resurrected during the Focus on Yorktown in 1989. Guidelines were prepared by a consultant hired in the mid 1990s and were completed about a year ago. He stated the difference in the proposal for guidelines now versus 21 years ago is that the County now has a proposed written set of guidelines. Mr. Carter then described how the guidelines identify four basic areas making up the town: the historic core; the waterfront area; the village south; and the village west. He also reviewed ways to handle certain types of construction under the guidelines. He noted that everything allowed in Yorktown now under the basic zoning ordinance continues to be allowed, and the same procedures for approval of new development by the Board would remain in effect. Mr. Carter stated there would just be the extra step of the architectural review board process. He then explained the membership makeup of the 5-member, Board appointed, architectural review board, noting that the majority of the membership, if possible, should be from Yorktown if they have the expertise; all members must be York County residents. Mr. Carter stated the review board must act within 60 days on applications, and the guidelines are structured for the review board to use as a guide as to what is appropriate for Yorktown. The appeal process goes to the Board of Supervisors, and ultimate relief is the Circuit Court. He stated that staff feels the guidelines take into account the varying kinds of architecture in Yorktown.

Discussion followed regarding the failure of the first proposal for architectural guidelines for Yorktown.

Vice Chairman Burgett asked when the guidelines would be presented to the Board of Supervisors.

Mr. Carter stated the Planning staff was reviewing them at present to make sure they were ready for Board consideration.

Mr. Stuck stated the guidelines have been referred to the Planning Commission for review and recommendation to the Board.

Mr. Carter noted the Planning staff was fine-tuning the document. The Board will have a work session in September, and the guidelines should have cleared the Planning Commission by that time.

Mr. Wiggins stated he was amazed to find out that there were no guidelines currently in place and that many of the residents here were totally opposed to them.

Discussion followed on opposition to the guidelines and correspondence that was received from the residents' association and whether it accurately reflected the feelings of the majority of the residents. Discussion also took place on incentives.

Miss Rapp asked what gave the Board of Supervisors the authority to establish an architectural review board in Yorktown.

Mr. Carter indicated there was a statute in the Code of Virginia that gives localities authority to establish and designate an historical district with appropriate architectural controls to be administered by an architectural review board appointed by the governing body.

EXCHANGE OF PROPERTY WITH THE NATIONAL PARK SERVICE (Not on Agenda)

Mr. Stuck informed the Board that there was an on-going effort to exchange some property with the National Park Service. Staff has received correspondence from the Superintendent containing the Park Service's guidelines for land swaps and the property it would be interested in exchanging for the County's Cook Road property. He discussed the Park Service properties the County would be interested in, with the largest one being the waterfront parcel between the Watermen's Museum and Yorktown Creek. Another piece the County would be interested in was the parking lot property next to the new courthouse. Mr. Stuck explained how the swap program would work, and indicated that staff was in the process of developing a list of properties based on information the Park Service provided.

Meeting Recessed. At 7:27 p.m. Vice Chairman Burgett declared a short recess.

Meeting Reconvened. At 7:32 p.m. the meeting was reconvened in open session by order of the Vice Chair.

TRUSTEES' AGREEMENT. (Continued)

The following members of the York Town Trustees were present at this time: Gregory Brezinski, Chairman; Edith Elliott; Paul Crockett; and Howard Clayton.

Vice Chairman Burgett welcomed the Trustees present, indicating the Board of Supervisors was trying to determine exactly what the Trustees wanted from the Board in terms of a new agreement. He stated the Trustees' proposal was asking for certain things the County cannot provide. He noted the Yorktown project was very important to the Board, and the Trustees' response had been disheartening.

Mr. Brezinski stated the biggest question was why the big difference in the two agreements. He indicated the answer was a higher level of wisdom, more information, and trying to correct problems associated with the current agreement, as well as receiving better legal advice. The Trustees do not actually own the property; it is owned in trust for other people, and the Trustees have a greater responsibility to look after the properties because the properties are held in trust. Mr. Brezinski stated the primary objective of the Trustees' proposed agreement was to protect the responsibilities of the Trustees to act in the best interest of the property. He explained there have been a number of legal issues dealing with the responsibilities of the Trustees, and the State Code indicates they are to manage the entrusted properties for the community fairly and honestly. The Trustees must act in person and not by agent. He stated the Trustees' draft agreement basically assures a certain level of participation and responsibility to its duties. Mr. Brezinski stated the County derives a great deal of economic benefit from the Trustees' properties, and the Trustees are asking that they be allowed to exercise their duties as they now understand them. He indicated the Trustees and the Board of Supervisors have not always worked as a team, and there were times when events happened in Yorktown and the Trustees were not notified until after the fact.

Mr. Stuck challenged Mr. Brezinski to name a specific time when the Trustees were not informed of work by the County being performed on the waterfront.

Mr. Brezinski cited the review of the plan for the central area and relocation of the pier. He stated it was posted before the Trustees knew anything about it.

Mr. Carter stated it was his recollection that when the Trustees approved the concept the pier was in the location coming out from the bathroom area. He stated he also recalled stating that the County was still tinkering with the conceptual design for the down-river location.

Mr. Brezinski stated his point was that there had been a number of times when that type of thing occurred. Many times the Trustees were notified by citizens in town that certain things were happening.

Mrs. Noll stated the Board needed to hear specific instances.

Miss Rapp expressed her agreement with having specific instances documented in writing. She stated she respected Mr. Brezinski's opinion; but because she was new she did not know the history, and she would like the specific instances in writing so she could deal with them.

Mr. Brezinski stated that along the same lines he had requested that the Trustees receive from the Board or staff reports relative to the comments on the Trustees' proposed agreement and was told by the individual receiving the request that he wasn't at liberty to release them.

Vice Chairman Burgett indicated the proposed agreement would be the subject of a closed meeting which was why the comments were not public information. The Board's comments would not help the Trustees make their case. He asked the Trustees to keep in mind that he owned as much of the beach property as anybody.

Mr. Clayton stated this was where the Trustees and the Board did not agree. He stated Mr. Burgett owned a part of the beach only because he was a resident of York County; as a part of the Board of Supervisors, he owns what the County owns. Mr. Clayton stated he would like for the Trustees and the Board to get this agreement finalized as soon as possible; but until all parties see it through the same eyes, it would not go forward. He stated he would approve an agreement that the Trustees' attorney says is legal to approve.

Vice Chairman Burgett stated the County was committing taxpayers' dollars for the benefit of everyone in the County, and he felt that the Board and the Trustees were in agreement on that point. The Board of Supervisors cannot turn taxpayer dollars over to the Trustees because of its responsibility. The people want to revitalize this waterfront and make it into something special; but before the Board can commit funding to the project, the Board and the Trustees should be in agreement. He stated he did not see any way this Board could abrogate its responsibilities after investing millions of dollars on the waterfront.

Discussion followed concerning the Trustees' attempt to model their proposed agreement with an agreement between the YMCA and the Board of Supervisors.

Mr. Crockett stated the Trustees did not have the financial ability to do anything, and must work together with the Board of Supervisors. He stated the Trustees and the Board of Supervisors could work together for the betterment of the town, and they shouldn't be fighting over who is going to do what. He noted he did not want to see anything in the agreement that would eliminate the Board of Supervisors from the process. He stated he believed the Trustees should get an office out of the agreement; the Trustees have many things stored in their homes because there is no other place to store things. Mr. Crockett also stated the Trustees should have input into how the Post Office building will be used and input into how things were going to be improved on the waterfront.

Mrs. Noll asked Mr. Crockett if he felt the agreement should contain wording to the effect that the County could be found in default.

Mr. Crockett stated he did not.

Mr. Brezinski asked the Board members to give the Trustees their feelings as to where the group needs to go and for individual Board member input in writing.

Mr. Clayton asked if the Board could ever enter into an agreement where it became simply a lessee of certain lands and pay rent.

Vice Chairman Burgett indicated it could.

Mr. Clayton stated he felt the Trustees were simply holders of land, and the proposal is to lease the land to the County for what it considers to be its value.

Vice Chairman Burgett asked if the lease money then goes into the County's general fund.

Mr. Crockett stated it then has to go back to the Yorktown Fund.

Mr. Clayton stated that a part of the fund has to do with the Trustees' discretion as to how the money is spent. The Trustees have spent almost \$15,000 answering an agreement which should not have been proposed in the first place. Mr. Clayton mentioned that the interjection of the Department of Interior into the agreement regarding the disposition of the old post office created a problem that was not present before. He stated the Department of Interior wants the Trustees to underwrite a project to restore the building that would cost \$600,000.

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Mr. Brezinski stated the post office agreement was a second agreement and not the agreement under discussion at this time.

Mr. Clayton stated the problem stems from the cost of the negotiations for the post office building.

Mr. Brezinski suggested, with the brief overview he had provided the Board, that the Board provide the Trustees with an overview of the County's position in response to the Trustees' proposed agreement, as well as the Board members' individual comments, compiled into a written response.

Mrs. Noll stated she felt the Trustees understood her position on their proposal.

Mr. Wiggins stated the County must retain control over how the funds are used since the Board members are the County's responsible representatives for any lawsuits that might take place. He stated the Board must also retain all control and responsibility for the pier.

Miss Rapp stated that as a taxpayer of York County she could not sign the proposed agreement. She stated she preferred the County staff's version. She noted that the citizens of York County did not realize that this land was not the land of the people; the more people who learn this fact, the more they will be against the Trustees' proposal.

Mr. Crockett stated if the Trustees could have some input on the way the building will be used, they could live with the County's proposal.

Mrs. Noll stated she felt the citizens should have some input on how the building will be used.

Mr. Crockett also noted he felt the Trustees should be provided with a place to conduct their meetings.

Vice Chairman Burgett stated he could not believe anyone would think that the Board wouldn't have the best interest of the citizens at heart. He stated the difficulty is that the Trustees' proposal puts a screeching halt on everything going on in Yorktown today. Mr. Burgett acknowledged that the Trustees sought participation in the process and that it was a fair request to a point; but the Trustees' agreement would have to be modified a great deal or nothing further will get done on the waterfront. He stated anything the County would make on a lease would go directly back into the Yorktown Fund to be spent for waterfront purposes. Mr. Burgett noted that the Board of Supervisors and the Trustees needed to come to an agreement very soon.

Mrs. Noll indicated she had read no mention of cooperation between the Trustees and the Board of Supervisors in the Trustees' proposal. The document proposed by the County mentions the need for cooperation, and the Board of Supervisors feels very strongly that it needs to be stated.

Mrs. Elliott noted that the Trustees' attorney felt very strongly about the wording in the Trustees' proposed agreement.

Miss Rapp stated the Trustees did not necessarily have to agree with their attorney in all instances.

Mr. Crockett stated the Trustees must have a say regarding the usage of the property.

Mr. Brezinski suggested that the Board of Supervisors and the Trustees meet two on two to work on the agreement.

Mrs. Noll expressed her disagreement with the suggestion, stating all the members of the Trustees and the Board of Supervisors should meet to work out an agreement.

Vice Chairman Burgett stated the bottom line was that if the County was going to put money into the waterfront, the County will control it. He also noted the Board would seek input from the Trustees.

Mr. Brezinski stated the Trustees' legal counsel had advised them that they must be participants in the responsibilities designated to them and be involved in the decision-making process. He stated they could not delegate their authority to someone else.

Vice Chairman Burgett indicated the two bodies had come to an impasse. He stated he believed something could be arranged that would give the Trustees input, but the ultimate responsibility for anything happening in York County stopped with the Board of Supervisors. The interpretation of the Trustees' attorney did not match the interpretation of the County Attorney. Something needed to be worked out to keep the Yorktown project going, but the Board of Supervisors would not agree to anything that would abrogate its responsibility to the citizens of York County.

Mrs. Noll indicated the whole purpose of the two sessions of Focus on Yorktown that were held was to sign off on the conceptual plans. It was a community effort of which the Trustees were a part.

Discussion followed concerning the bill passed by the General Assembly pertaining to the authority and responsibilities of the Trustees.

Mrs. Noll asked what the Trustees found unacceptable to the County's proposal. She stated that perhaps modifying the current agreement would be agreeable to them.

Mr. Crockett stated he felt the Trustees needed more input in the use of the property.

Mr. Brezinski indicated he was not sure that any of the Trustees could agree to such a statement at this time. The Trustees had been advised by current legal counsel that the County's proposed agreement was not in accord with the Trustees' legal responsibilities because it delegated all its authority and decision-making authority to the County.

Vice Chairman Burgett stated that giving the Trustees input could be provided, but the ultimate responsibility must rest with the Board of Supervisors.

Mr. Brezinski reiterated his original request for a written response from the Board of Supervisors as to why the Trustees' proposed agreement was unacceptable.

Vice Chairman Burgett stated he would not vote to spend any further funding without the County having control. The proposed agreement requires the County to give up control of the County's funds.

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Mr. Barnett stated he did not feel the current proposal was legal.

Discussion followed on a way to find a compromise agreement.

After further discussion, the Board by consensus directed that the Trustees' proposed agreement be reviewed and a draft response be prepared for the Board's review at its work session to be held June 13 and for forwarding to the Trustees by June 16 if possible.

Meeting Adjourned. At 8:39 p.m. Vice Chairman Burgett declared the meeting adjourned sine die.

Daniel M. Stuck, Clerk
York County Board of Supervisors

Walter C. Zaremba, Chairman
York County Board of Supervisors